IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 191 OF 2006

IN

NOTICE OF MOTION NO. 3331 OF 2004

IN

FIRST DEFENDANT'S COUNTER CLAIM

(LODGING) NO. 2571 OF 2004

IN

SUIT NO. 1861 OF 2002

Dhirajlal Raishi Chheda)
aged about 49 years, of Mumbai)
Indian Inhabitant, residing at)
Samavsaran Building, M.G.Road,)
Ghatkopar (West), Mumbai -)
400 086. ... ...).. Appellant.

Versus

1) Raishi Shivji Chheda)
aged about 83 years of Mumbai)
Indian Inhabitant, residing)
at 2nd Floor, Samavsaran)
Building, M.G. Road,Ghatkopar)
(West), Bombay - 400 086..)

2) Smt.Mithiben Raishi Chheda,)
aged about 74 years of Mumbai)
Indian Inhabitant, residing)
at 2nd Floor, Samavsaran)
Building, M.G. Road,Ghatkopar)
(West), Bombay - 400 086..)
3) Mukesh Raishi Chheda,)
aged about 41 years of Mumbai)
Indian Inhabitant, residing)
at 2nd Floor, Samavsaran)
Building, M.G. Road,Ghatkopar)
(West), Bombay - 400 086..)
4) Smt.Dipti Mukesh Chheda,)
aged about 36 years of Mumbai)
Indian Inhabitant, residing)
at 2nd Floor, Samavsaran)
Building, M.G. Road,Ghatkopar)
(West), Bombay - 400 086..)
5) Smt.Manjula Dhirajlal Chheda,)
aged about 48 years of Mumbai)
Indian Inhabitant, residing)
at 2nd Floor, Samavsaran)
Building, M.G. Road,Ghatkopar)
(West), Bombay - 400 086..)
6) Smt. Shantaben Manilal Nishar)
aged about 55 years of Mumbai)
Indian Inhabitant, residing)

at 2/20, Kamla Bhavan, Sahar)
Road, Andheri (E), Mumbai)
400 069. ...)

7) Smt. Varshaben Mahendra Gada)
aged about 39 years of Mumbai)
Indian Inhabitant, residing)
at 5/182, Shivneri C.H.S.Ltd.)
Ganesh Chowk, D. N.Nagar,)
Andheri (W),Mumbai-400 059..)... Respondents.

Mr.Navin Parekh with Mr. P.A.Sarvankar i/by
Mr.G.S.Bhat for the Appellant.

Mr. J.G.Shukla i/by M/s. G. H. Shukla & Co.,
for the Respondents.

CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.

DATED : 21ST DECEMBER, 2006.

ORAL JUDGMENT (Per R.M.Lodha, J.):

We shall refer to the parties as parties to the suit for disposal of this appeal.

2. Raishi Shivji Chheda (plaintiff no.1) and Smt. Mithiben Raishi Chheda (plaintiff no.2) are husband and wife. Mukesh Raishi Chheda (plaintiff no.3) is the son of plaintiff nos.1 and 2. Smt. Dipti Mukesh Chheda (plaintiff no.4) is the wife of plaintiff no.3 and daughter-in-law of plaintiff nos.1 and 2. Dhirajlal Raishi Chheda (defendant no.1) is the son of plaintiff nos.1 and 2 and brother of plaintiff no.3. The defendant no.2, Smt. Manjula Dhirajlal Chheda, is the wife of defendant no.1. Smt. Shantaben Manilal Nishar and Smt. Varshaben Mahendra Gada, defendant nos.3 and 4 respectively, are the daughters of plaintiff nos.1 and 2.

3. The dispute in the suit, principally, is between the plaintiff no.1 and the defendant no.1 i.e. father and son. The plaintiffs have sought for diverse reliefs in the plaint, inter alia, for declaration that the plaintiff no.1 is the sole and absolute owner of the property being the land and building Samavsaran standing thereon situate at M. G. Road, Ghatkopar (West), Mumbai and that the Deed of Dissolution dated 31st March, 1996 and the Deed of Family Arrangement dated 25th June, 1993 are false and forged documents. The defendant no.1 has traversed the plaintiffs' claim by filing written statement and has also prayed for

counter claim seeking specific performance of the family arrangement dated 25th June, 1993.

4. We may indicate that we have seen the case in the light of the amended pleadings.

5. It is not in dispute that the plaintiffs took out notice of motion being Notice of Motion No. 1485 of 2002, inter alia, seeking restraint order against defendant no.1 from obstructing or interfering with the quiet and peaceful possession of the plaintiffs and the members of their family on the 2nd floor of the building Samavsaran. The plaintiffs also sought for a restraint order against defendant no.1 from alienating, encumbering or parting with possession or inducting third party in or otherwise in any manner, creating any third party rights or in any manner disposing of the suit premises. The said notice of motion was disposed of on 2nd July, 2004. By the said order, restraint order operates against defendant no.1 from obstructing or interfering with the possession of the plaintiffs and the members of their family in respect of the premises on the second floor of the building Samavsaran and also defendant no.1 has been restrained from alienating, encumbering or parting with possession of or inducting any third party in or otherwise in any manner or creating any third party

rights or in any manner disposing of the suit premises.

6. The defendant no.1 also took out a notice of motion against the plaintiffs based on the counter claim seeking restraint order against plaintiff no.1 from encumbering, alienating and/or creating any right in favour of any third party in respect of the suit property and for the permission to him to deposit Rs.9,50,400/- payable to plaintiff nos.1 and 3.

7. The said notice of motion was contested by the plaintiffs on diverse grounds, inter alia, that defendant no.1 has forged and fabricated the purported family arrangement dated 25th June, 1993.

8. The learned motion Judge dismissed the notice of motion taken out by defendant no.1 vide order dated 2nd December, 2005 by observing that the interim reliefs claimed by defendant no.1 are not capable of being granted since the family arrangement itself is under challenge and the said prayers are in the nature of the final relief.

9. The Counsel for the parties argued the appeal for quiet some time. However, in our considered view the detailed consideration of the said arguments are not

necessary since it is an admitted position that by order dated 20th June, 2002 in S. C. Suit No. 1452 of 2002, the City Civil Court has passed an order of status quo and that still holds the field. There is already a restraint order against defendant no.1 as noticed above vide order dated 2nd July, 2004. Since there is already an order of status quo passed by the City Civil Court, we are of the view that no grave prejudice would be caused to plaintiff no.1, if he maintains the status quo in respect of the second floor of the subject premises which admittedly is in possession of the plaintiffs, particularly, in view of the fact that defendant no.1 has offered to deposit a sum of Rs.12,00,000/- before the Court. Obviously, such deposit is without prejudice to the rights and contentions of the parties and shall not create any equity in favour of the defendant no.2 nor shall prejudice the stand of the plaintiffs that the purported family arrangement dated 25th June, 1993 is forged and fabricated. The ground floor and first floor of the said building, as noticed above, are in possession of defendant no.1 and he has already been restrained from alienating, transferring, disposing of or creating any third party rights or interest in the suit property.

10. We, accordingly, dispose of the appeal by

following order:

(i) The appellant (defendant no.1) shall deposit a sum of Rs.12,00,000/- with the Prothonotary and Senior Master of this Court by 15th January, 2007.

(ii) Upon compliance, the order of status quo shall operate against plaintiff no.1 with regard to the second floor of the subject property.

(iii) Upon deposit, the Prothonotary and Senior Master shall invest the said amount in the fixed deposit of a nationalised bank, initially for a period of two years, renewable thereafter for a period of two years each time, until the disposal of the suit. The amount so deposited and the interest accrued thereon shall be subject to the decision in the suit.

(iv) In case, defendant no.1 fails to deposit the amount of Rs.12,00,000/- within the time afore directed, it would be assumed that there is no order of status quo in respect of the second floor of the suit property against plaintiff no.1.

11. Appeal is disposed of, accordingly.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)